

HOUSE BILL REPORT

2ESSB 5171

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to facilitating voting for service and overseas voters.

Brief Description: Facilitating voting for service and overseas voters.

Sponsors: Senate Committee on Government Operations, Tribal Relations & Elections (originally sponsored by Senators Hobbs, Roach, Swecker, Pridemore, Shin, King, Kilmer, Hill, Keiser and McAuliffe; by request of Secretary of State).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 3/10/11, 3/21/11 [DPA].

**Brief Summary of Second Engrossed Substitute Bill
(As Amended by House)**

- Changes the date of the primary for general elections to be held in November to the first Tuesday of the preceding August.
- Authorizes overseas and service voters to return voted ballots by electronic means, provided the voter includes a signed declaration and a waiver of secrecy with the voted ballot.
- Requires a county auditor to send ballots to each service and overseas voter at least 30 days before each special election and at least 45 days before each primary and general election.
- Revises partisan and nonpartisan candidate filing provisions in the event an elective office becomes vacant.
- Changes numerous election-related dates and deadlines in response to the change in the date of the primary and other requirements of the federal Military and Overseas Empowerment Act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 8 members: Representatives Hunt, Chair; Appleton, Vice Chair; Alexander, Darneille, Dunshee, Hurst, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 3 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Condotta.

Staff: Thamas Osborn (786-7129).

Background:

General Election Primaries.

Primaries for general elections to be held in November, and precinct committee officer elections, must be held on the third Tuesday of the preceding August.

Civilian and Resident Mail-in Ballots.

State law requires that ballots must be mailed to voters at least 18 days before a primary, special election, or general election. In order for a mail-in ballot to be counted, it must be postmarked no later than election day and must reach the county auditor before the election results are certified. For primary and special elections, the county canvassing board must certify election results by the fifteenth day after the election. For general elections, the election results must be certified within 21 days.

Overseas and Service Voter Ballots.

County auditors must send ballots to all overseas and service voters at least 30 days before any primary, general election, or special election. Requests for ballots made by overseas or service voters after that day must be processed immediately by the auditor. Paper ballots returned by overseas and service voters must reach the county auditor before the results are certified in order for the votes to count. Certification occurs no later than 15 days after a primary or special election and no later than 21 days after a general election.

Overseas and service voters are subject to additional special provisions and requirements, including:

- an overseas or service voter may fax a voted ballot and accompanying envelope if the voter agrees to waive secrecy;
- a ballot sent by fax will be counted only if the original paper ballot documents are received before certification of the election;
- the date of the signature on the ballot envelope is considered the date of mailing and the envelope must be signed by election day;
- the signed declaration on the envelope is the equivalent of voter registration; and
- a voter may obtain a ballot via electronic mail (e-mail), which the voter may return by mail.

Definition of Overseas and Service Voters.

"Service voter" is defined as any voter of the state who is a member of the United States Armed Forces (USAF) either in active service or as a member of the military reserves, a student or faculty member of a United States military academy, a member of the Merchant Marines, or a member of a religious group or welfare agency officially serving with the USAF. "Overseas voter" is defined as any voter of the state outside the territorial limits of the United States.

Military and Overseas Empowerment Act.

The federal Military and Overseas Empowerment Act (MOVE Act) requires that ballots for overseas and service voters be sent 45 days before an election. The MOVE Act also requires that those voters be provided additional options for receiving ballots, and that ballot instructions include contact information for the auditor's office to confirm that the voter's ballot was received. Service and overseas voters may register to vote, request a ballot, or transmit a ballot using forms and methods provided by the United States Department of Defense or the United States Election Assistance Commission.

Filling Vacancies for Partisan Elective Offices.

If a vacancy occurs in any partisan state or county elective office before the eleventh Tuesday prior to the primary for the next general election following the occurrence of the vacancy, a successor must be elected to that office at that general election.

Except during the last year of the term of office, if such a vacancy occurs on or after the eleventh Tuesday prior to the primary for that general election, the election of the successor occurs at the next succeeding general election. The elected successor holds office for the remainder of the unexpired term.

If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has been qualified and continues through the term for which he or she was elected.

Filling Vacancies for Nonpartisan Elective Offices.

If a void in candidacy for a nonpartisan office occurs on or after the eleventh Tuesday prior to a primary, but prior to the eleventh Tuesday before an election, then the filing for such office must be reopened for a three-day period.

If a vacancy occurs in any nonpartisan office on or after the eleventh Tuesday prior to a primary, but prior to the eleventh Tuesday before an election, and leaves an unexpired term to be filled by an election for which filings have not been held, then the filing for such office must be reopened for a three-day period.

The candidate receiving a plurality of the votes cast for that office in the general election is deemed elected.

Summary of Amended Bill:

Scheduling of the Primary and Other Election-Related Scheduling Changes.

The date of the primary is moved up by two weeks. Accordingly, primaries for general elections to be held in November, and precinct committee officer elections, must be held on the first Tuesday of the preceding August.

The county auditor must send ballots to each service and overseas voter at least 30 days before each special election and at least 45 days before each primary and general election.

The beginning of the filing period for primary candidates is moved up by three weeks.

The county canvassing board has one less day to certify the primary election and, to be counted, ballots must be received the day before canvassing ends. To be counted, general election ballots must be received the day before canvassing ends.

Only for the year 2012, the date of the April special election is moved one week earlier, to the third Tuesday, or April 17, 2012. For that special election only, the county canvassing board must complete the canvass and certify the election results 10 days after election day. This new provision will provide an extra week and a half between the date when the April election is finalized and the date of candidate filing. The extra time is needed to make necessary changes in voter registration systems to facilitate the accurate assignment of voters to their new jurisdictions and precincts following redistricting.

Voting by Overseas and Service Voters.

Overseas and service voters may receive a ballot via fax, e-mail, or other electronic means. Ballots must be sent to each service and overseas voter at least 30 days before each special election and at least 45 days before each primary and general election. An overseas or service voter may return a voted ballot via fax or e-mail, provided the voter includes a signed declaration and a waiver of secrecy with the voted ballot. In order for an electronically transmitted ballot to count, it must be returned to the county auditor by fax or e-mail by 8 p.m. on the day of the primary or election. If an overseas or service voter returns a voted electronic ballot, then the return of the original paper ballot is not required.

Service and overseas voters must be provided with instructions and a secrecy cover sheet for returning a voted ballot and signed declaration by fax or e-mail. Also, a county auditor must establish procedures to maintain the secrecy of a voted ballot returned by an overseas or service voter using fax or e-mail

Filling Vacancies for Partisan and Nonpartisan Elective Offices.

When vacancies occur in an elective office the following requirements apply:

- If a vacancy occurs in an elective office on or after the first day of the filing period, and that office is not scheduled to appear on the next general election ballot and leaves an unexpired term, then the election of the successor shall occur at the next succeeding general election legally authorized for that office.

- If a void in candidacy for a nonpartisan office occurs after the regular filing period and deadline to withdraw, but prior to the day of the primary, then filings for that office shall be reopened for a period of three business days.
- If a vacancy occurs in any partisan elective office before the first day of the regular filing period, the position must be open for filing during the regular filing period and the successor shall be elected at the general election.
- Except during the last year of the term of office, if the vacancy for a partisan elective office occurs on or after the first day of the regular filing period, then the election of the successor shall occur at the next succeeding general election.

Changes to Election-Related Dates and Deadlines.

Numerous election-related dates and deadlines are changed in response to the change in the date of the primary and other requirements of the federal MOVE Act.

Amended Bill Compared to Second Engrossed Substitute Bill:

The amendments to the bill make changes to Second Engrossed Substitute Senate Bill 5171.

The amended bill:

1. establishes that if a vacancy occurs in an elective office on or after the first day of the filing period, and that office is not scheduled to appear on the next general election ballot and leaves an unexpired term, then the election of the successor shall occur at the next succeeding general election legally authorized for that office;
2. establishes that if a void in candidacy for a nonpartisan office occurs after the regular filing period and deadline to withdraw, but prior to the day of the primary, then filings for that office shall be reopened for a period of three business days;
3. establishes that if a vacancy occurs in any partisan elective office before the first day of the regular filing period, the position must be open for filing during the regular filing period and the successor shall be elected at the general election;
4. establishes that, except during the last year of the term of office, if the vacancy for a partisan elective office occurs on or after the first day of the regular filing period, then the election of the successor shall occur at the next succeeding general election;
5. requires that service and overseas voters be provided with instructions and a secrecy cover sheet for returning a voted ballot and signed declaration by fax or e-mail;
6. requires a county auditor to use established procedures to maintain the secrecy of a voted ballot returned by an overseas or service voter using a fax or e-mail; and
7. makes technical changes to statutory repeal provisions and effective dates to reflect changes made to the structure of the bill by the amendments.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect January 1, 2012, except for section 10, relating to elective office vacancies; section 11, relating to a void in candidacy and the special three day filing period; section 12, relating to a void in candidacy and the lapsing of a

scheduled election; and section 30, relating to the repeal of RCW sections 29A.24.210 and 29A.24.211, which contain an emergency clause and take effect immediately; and section 21, relating to the certification of elections by county canvassing boards, which takes effect on July 1, 2013.

Staff Summary of Public Testimony:

(In support) This is the fifth year that a bill has been proposed to facilitate voting by service and overseas voters. The bill has two primary features; it changes the date of the primary and it makes it easier to vote electronically. The federal MOVE Act requires that we change our primary date to allow more time for service and overseas voters to receive ballots and cast their votes. The federal government has refused to provide Washington with another temporary exemption from the requirements of the MOVE Act. A great many countries have no functioning postal system or have a system that is unreliable. This bill makes changes to the voting system that will make it much easier for United States citizens who are abroad to vote. The bill makes changes to the timelines for dealing with vacancies in elective offices. The bill also corrects an error in the Senate bill regarding the repeal of a statute. Members of the armed services deserve to have their votes counted and this bill makes changes that will facilitate this. Veterans groups strongly support the bill.

(Opposed) Cyber ballots are inferior because they are not secret ballots. Overseas service members who cast electronic votes via computers cannot count on their votes being secret. Most overseas service members do not need electronic voting, and such voting should be allowed only as a last resort. There should be provisions in the bill requiring army units to be formally qualified to engage in electronic voting. Twenty other states allow such electronic voting, but all have much better secrecy protections than those provided in this bill.

Persons Testifying: (In support) Katie Blinn, Office of the Secretary of State; Mark San Souci, Department of Defense State Liaison Office; Julie Anderson, Washington State Association of County Auditors and Pierce County Auditor; Bob Rudolph, Veterans Legislative Coalition and Veterans and Military Families for Progress; Kim Wyman, Thurston County Auditor; and James McMahan, Washington Association of County Officials.

(Opposed) Tim White, San Juan County Citizens for Fair Elections.

Persons Signed In To Testify But Not Testifying: None.